IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Writ Petition No. 296 (SB) of 2006

Hayat Ram Arya,
S/o Sri Nain Ram,
Presently posted as Deputy Project Director,
Watershed Management Directorate,
Nainital Division, Haldwani,
District – Nainital. **.....Petitioner.**

Versus

1. State of Uttaranchal through Additional Chief Secretary and Forest and Rural Development Commissioner, Government of Uttaranchal, Secretariat, Dehradun, Uttaranchal.
2. Chief Project Director, Watershed Management Department, Government of Uttaranchal, Dehradun, Uttaranchal.
3. S.K. Upadhyay, presently posted as Agriculture Officer (Grade – II), Project Director Officer, Haldwani, District – Nainital.

.....Respondents.

Coram:
Honb'el M.M. Ghildiyal, J
Hon'ble J.C.S. Rawat, J
(PC)

Heard Sri Sudhanshu Dulia, Sr. Advocate, assisted by Sri D. S. Patni, learned counsel for the petitioner, Sri Paresh Tripathi, learned standing counsel for respondents no. 1 and 2 and Sri Ashish Joshi, learned counsel for respondent no. 3.

By means of this writ petition, the petitioner has challenged the order dated 19.09.2006 passed by respondent no. 2 i.e. Chief Project Director, Watershed Management Directorate, Dehradun by which Sri S.K. Upadhyay – Agriculture Officer, Haldwani has been directed to officiate on the post of Deputy Project Director, Uttaranchal

Centralised Watershed Management Project, Haldwani until further orders.

The said order has been challenged by the petitioner on various grounds. First, petitioner has been transferred thrice in a very short span of time. By order dated 22.07.2005, petitioner was transferred from Dehradun to Haldwani. Again by order dated 20.07.2006, petitioner has been transferred from Haldwani to Bageshwar and lastly, by order dated 19.09.2006, petitioner has been transferred from Haldwani to Dehradun. The assertion of the petitioner is not correct. The second transfer order which was passed on 20.07.2006 was not implemented because of the stay order passed by this court on 25.07.2006 in Writ Petition No. 235 (SB) of 2006. Thus, petitioner has been transferred from Dehradun to Haldwani on 22.07.2005 and after that he has been transferred on 19.09.2006 from Haldwani to Dehradun. Thus, the impugned transfer order does not come in the category of frequent transfer.

The submission of the learned counsel for the petitioner on this ground does not have any force.

Second ground on which, learned counsel for the petitioner has challenged the impugned transfer order is that petitioner has been transferred in mid term and study of his elder son, who is studying in Class X, at Kiccha would certainly be disturbed due to this transfer. Petitioner himself stated that he is residing at Haldwani, his wife is residing at District – Almora, along with his younger son, who is studying in Class VIII and his elder son is studying at Kiccha.

As the elder son studying in Kiccha there in no question of his study being disturbed.

It is well settled law that the Government Servant while being transferred will certainly face some difficulties and on that ground he cannot challenge the transfer order. Transfer is exigency of service. We do not find any force in the submission of learned counsel for the petitioner.

The third ground is that impugned order has not been passed by the Competent Authority. From the perusal of the impugned order it reveals that the order was sent to the Additional Chief Secretary and Commissioner, Forest and Rural Development, Government of Uttaranchal, Dehradun for approval.

From perusal of paragraph 13 of the counter affidavit filed by learned counsel for respondents, it is clear that the approval has already been granted by the competent authority. Petitioenr has further challenged this order on the ground that Sri S.K. Upadhyay could not have been appointed as Deputy Project Director because he was not having the required pay scale in the parent department as prescribed by the Government Order dated 08.04.2004.

Learned counsel for the petitioner has further submitted that this court in writ petition 235 (SB) of 2006 (Chandra Bhushan Tripathi Vs. State of Uttaranchal and others) while granting the stay order has categorically held that a person can only be taken on deputation on the post of Deputy Project Director, who is having pay scale of Rs. 10,000–15,200. This ground does not have any force because Sri S.K. Upadhyay has not been appointed as Deputy Project

Director on the contrary he has been appointed as Agriculture Officer which is clear from order dated 02.09.2006 (annexed as Annexure no. CA 1 to the counter affidavit filed by respondent no. 3). By this order Sri S.K. Upadhyay has been posted as Agriculture Officer / Horticulture Officer. However, he has been asked to hold the charge of Deputy Project Director, in view of the fact that the post of Deputy Project Director is vacant for the time being.

We do not find any merit in the case, as such, writ petition is dismissed. Interim relief application no. 12445 of 2006 is rejected. No order as to costs.

(J.C.S. Rawat, J) **(M.M. Ghildiyal, J)**

October 31, 2006
SKSharma